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What Sort of Labor Law Should We Have?

A radio discussion over WGN and the Mutual Broadcasting System

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What Sort of Labor Law Should We Have?

MR. BUCHANAN: What sort of labor law should we have?

MR. GOLDBERG: We shouldn't have the Taft-Hartley law. We should have a law that will encourage collective bargaining rather than discourage good relations between unions and employers.

MR. HAAKE: We should have a mutually beneficial industrial relationship and security in such a way as to protect essential American institutions.

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MR. BUCHANAN: Anyone familiar with the problems of management and labor recognizes the names of the Wagner Act and the Taft-Hartley Act. And now we have a deluge of labor bills in Congress—the Wood bill, the Lesinski proposal, and now the Sims amendments.

What are the provisions of these acts? How important are they to both labor and management? And just how do they affect each of us as a worker or consumer?

Mr. Goldberg, you mention the Wagner Act as the act that you would like to see govern labor. What provisions of that act would you like to see reinstituted by our government?

Re-Enact Wagner Act?

MR. GOLDBERG: I think the Wagner Act, Mr. Buchanan, should be re-instituted because it is a simple law that encourages collective bargaining, that promotes industrial peace rather than industrial warfare, and that regulates the relations between management and labor in the traditional American way —that is, without undue interference on the part of government.

I am against the Taft-Hartley Act because the Taft-Hartley Act injects the government into management-labor relations in a way unprecedented in the history of our country.

MR. BUCHANAN: Mr. Haake, you want to safeguard the rights of both management and labor. Can that be done in some sort of labor law so that both could be satisfied?

MR. HAAKE: I think so, essentially. Of course it could not be done under the Wagner Act, because, while the Wagner Act was a simple act—and it was that—it leaned decidedly toward the side of labor. It denied the employer rights that it guaranteed to the employee. If the employer dared to express himself openly with regard to unions he might find himself guilty of an unfair labor practice. It was a simple law in the sense that the government took side definitely with labor against the employer.

I should be just as earnestly opposed to an act that did the opposite thing, and I would be inclined to wipe the slate clean and agree upon the principles that should govern relationships, then build an act from that.

New Bills

MR. BUCHANAN: We have mentioned the Taft-Hartley Act and the Wagner Act, with which I think most of us are familiar. However, I am confused about the bills now under consideration in Congress. Mr. Goldberg, could you give us a summary of what has been going on there in the past few weeks?

MR. GOLDBERG: I should be glad to. But before doing so I should like to welcome the statement of Mr. Haake that the slate must be wiped clean. That means, of course, that the Taft-Hartley Act must be repealed. I could not be in stronger agreement with that statement had I made it myself.

MR. BUCHANAN: I am sure Mr. Haake will have an answer to that, but I repeat, let's get to present Congressional action.

MR. GOLDBERG: The Administration has proposed a bill which has come to be known in the Senate as the Thomas bill and in the House of Representatives as the Lesinski bill. This bill would re-enact the Wagner Act with certain amendments proposed by the President in his State-of-the-Union

message. It is this bill, the Thomas-Lesinski bill, which both the C.I.O. and A.F. of L. have supported and which we think should command public support.

There has been offered, however, a bill the exact paternity of which is unknown, called the Wood bill. We know the mother is Representative Wood, a Georgia Dixiecrat. The father is some Republican unknown, and I have scanned the *Congressional Record*, but I cannot find his name. Perhaps Mr. Haake could supply it for us. The Wood bill would re-enact the Taft-Hartley Act. It contains very few concessions designed to make it more palatable in the public eye. But we are not deceived, and I don't think the public is deceived.

MR. BUCHANAN: Now, Mr. Haake, I assume that your general view of this Wood bill is somewhat different?

'Keep Taft-Hartley'

MR. HAAKE: Quite so.

When I said a moment ago that I would wipe the slate clean, I certainly was not inferring that I would do away with the Taft-Hartley Act. I was saying what I say in many other instances: When you are approaching a problem you can very often get a better analysis of that problem and find a better answer for it if you lay aside what things have already been done and start clean from the beginning; agree on your principles, and then draft an act.

If I were choosing among the various acts available, then certainly I would take the Taft-Hartley Act in preference to the Wagner Act, largely because while it may go too far in some respects, it recognizes that the employer is a citizen as well as a member of a labor union is a citizen.

MR. BUCHANAN: What are your views of the Wood bill, Mr. Haake?

MR. HAAKE: The Wood bill, on the whole, is a good bill. I am not so sure that I would agree with all its provisions, and I think we are going to have to do some experimenting with whatever bill is finally passed. As among the bills offered, the Wood bill, in my judgment, is the best of them.

MR. BUCHANAN: What about the Sims amendments? Would they be attached to the Thomas-Lesinski bill or to the Wood bill?

MR. GOLDBERG: Mr. Buchanan, the Sims amendments were offered as amendments to the Thomas-Lesinski bill. Labor, however, found one amendment among others in the Sims amendments, particularly objectionable. That is one that provides for injunctions in national emergency disputes. Labor is opposed to injunctions as being un-American, as imposing upon working men a condition of involuntary servitude, and as being a sort of a provision which does not solve the problem of a national emergency as demonstrated by the experience of the last 14 or 15 months under the provisions of the Taft-Hartley Act.

Guarding Essential Industry

MR. HAAKE: Whether it is done by means of injunctions or done by some other means—I am not prepared to say what is the best way of doing it—we certainly must protect the public against the unguarded and the unbridled power of a few men who can stop essential industries!

I don't believe in involuntary servitude either, but, as between protecting the lives of babies who need milk and the rights of a union leader to call a strike of the milk drivers, I vote for the babies.

MR. GOLDBERG: It is interesting to me to hear Mr. Haake say that. Of course we all want to protect the national interest, but I want to remind him and remind everybody that in 1932 the Republican administration enacted a law which prevents the use of injunctions. That law is the Norris-LaGuardia Act. I have not found one person in Congress—and that includes all Republican leaders—who will publicly disavow the statute which was enacted in 1932. That statute says injunctions do not solve labor disputes and protect the national interest. But behind the back door, injunctions have been intro-

duced in the Taft-Hartley Act and in the Wood bill. In fact, more than 40 injunctions have been obtained in the almost two years that the Taft-Hartley Act has been on the books. Now, no one can defend 40 injunctions in two years under the provisions of a law which attempts to pay lip service to the Norris-LaGuardia Act but really repeals it.

Need for Injunctions?

MR. HAAKE: When you speak of those 40 injunctions, don't you believe there was a real need for them? The question is not whether you can defend the injunctions, but whether you can possibly defend *not* using them.

The President in the coal emergency —and in the railway emergency if he had not had that potential power— would have been unable to prevent those situations from moving into positive disaster. I don't think, frankly, that lip service to any bill commits us to any position on a subsequent bill. I think the use of injunctions does have its place, and, when a national emergency is involved, and no other means can be found of protecting the nation, then the injunction must be used.

MR. BUCHANAN: It seem to me that we are concerned with collective rights and individual rights and how they are treated in a labor law. Mr. Goldberg, you believe that the Taft-Hartley law puts the government in the strong position of acting between employer and labor. You would oppose that sort of thing?

MR. GOLDBERG: I definitely would, and I would imagine that every businessman who believes in free enterprise would oppose the Taft-Hartley Act and the philosophic conception behind that law.

If free enterprise means anything, it means that management and labor in the field of labor relations should negotiate between themselves and settle their differences and establish their relations by the free processes of collective bargaining. The Taft-Hartley Act injects the government into the relationship between management and labor in a multitude of ways. It prevents free bargaining on the question of union security. It prevents free bargaining on the question of welfare funds. And that, Mr. Haake, was the cause of the coal strike last year.

That strike arose out of a legalistic question of what the Taft-Hartley Act meant on the subject of union security, and it became necessary for a court to resolve that question. Once the court resolved the question, the strike was over, so the national emergency that you have reference to in that situation was caused by, of all things, the Taft-Hartley Act!

Lewis Was Right?

MR. HAAKE: The Taft-Hartley law entered into it, of course, but the strike was really caused by John L. Lewis finding it desirable to discover how far he could go in violating the law. John L. Lewis is much of a law to himself, and the Taft-Hartley Act came into the picture because Lewis, for once, discovered that he could not thumb his nose at all law and order. It was high time there was something to stop that!

I agree with you thoroughly that we should have free bargaining between the two sides. That is the traditional American way of free enterprise. But that was destroyed when we set up the Wagner Act. If there had been no Wagner Act, there would have been no Taft-Hartley Act. And, if you will go along with me on the proposition that we do away with the Taft-Hartley Act and also do away with the Wagner Act—have neither—and then make both unions and businessmen subject to an anti-trust law, I will say with you, "Let's not have any labor law at all."

MR. GOLDBERG: First of all, I should say that since John Lewis is not a dues-paying member of the C.I.O. I am not under any professional obligation to defend him. But let me point out that in the dispute last year that

caused the coal strike the court decided that issue *in favor of* Lewis and *against* the coal operators. In other words, if we are to regard the court decision as definitive, Lewis was right in that respect and the coal operators were wrong.

MR. HAAKE: Then where did this fine enter, the punishment that was visited on Lewis and the union?

MR. GOLDBERG: That fine came out of an alleged violation of the court injunction.

MR. HAAKE: Precisely!

MR. GOLDBERG: But the court's final decision was that on the welfare fund issue which precipitated the strike the interpretation placed on it by the coal operators was wrong and the interpretation placed on the law by Lewis was correct. And you will remember that once that decision came down the strike was amicably settled.

MR. HAAKE: I also remember that the Supreme Court once ruled that the law which prohibits the use of gold and relieved the government of its contractual obligations in gold was legal and constitutional. Everyone, including the Supreme Court, knew it was not. In other words, occasionally the Supreme Court does things for expediency and does not prove rightness or wrongness of a law *per se*.

No Law Whatever?

MR. BUCHANAN: I am especially interested in the proposition of Mr. Haake that both the Taft-Hartley Act and the Wagner Act be wiped off the books. Do you think that would be fair to labor, Mr. Goldberg?

MR. GOLDBERG: I do not think it would be fair to labor and I do not think it would be in the national interest. That is based on a misconception of what the Wagner Act provided.

The Wagner Act was not a one-sided law, nor was it a particularly complicated law. It provided two fundamental principles, and I wonder whether Mr. Haake disagrees with those principles.

First, you could not discharge a man merely because he belonged to a labor union. I don't think anybody can argue against that. The second principle was that if, in a democratic election conducted by the government in an impartial way, a majority of the employees in a particular plant or bargaining unit voted for a union, it became the legal obligation of the employer to enter into collective bargaining discussions with that union. That is all the Wagner Act provided. And I can't see that any person can disagree with those provisions.

Coercion of Worker, Employer

MR. HAAKE: Unhappily, Mr. Goldberg, Charles Fahy, who was the legal counsel for the National Labor Relations Board at that time, did disagree with you. I asked him whether it was fair to stop coercion of the employee by the employer and also fair to permit the coercion of employees by the union. Under the Wagner Act you did *prevent* coercion of the employee by the employer, but you did *permit* coercion of the employee by the union. Mr. Fahy's answer—given in public—was this: They were not concerned under the Wagner Act with giving justice to the employer. They were concerned with forcing collective bargaining on American industry. It was a one-sided proposition—to force the acceptance of collective bargaining and to force the employer to accept certain powers vested in the unions.

MR. GOLDBERG: Let me point out, Mr. Haake, that on the subject of coercion there is ample law in the various states which protects employers and protects individuals against any unlawful coercion on the part of the unions.

MR. BUCHANAN: What do you mean by coercion? Give me an example, would you, Mr. Goldberg?

MR. GOLDBERG: I don't know what Mr. Haake has in mind, but I assume he means unlawful physical acts directed by a union or union members against individuals or against the employer.

MR. HAAKE: Or preventing a union member from making a living by

throwing him out of a union because he displeases some union official, which the Taft-Hartley Act says shall not be done.

MR. GOLDBERG: I would answer Mr. Haake by saying that the laws of all states prevent that type of coercion, and there is no point that I can see in imposing double jeopardy upon a union by both state law and federal law covering the same action. That has been the basic objection to the Taft-Hartley provision on this point.

MR. HAAKE: That is not the position that you take with respect to union rights under the common law. The union has all the rights you would have them given under a state law. You would say the common law is not enforced. The law is not enforced against this coercion. The law is there to prevent coercion, but it is not effective in doing so.

Your answer to me if I said that labor has all the rights it needs under the common law would be that those rights are not effective without something like a Wagner Act or a Taft-Hartley Act. There are laws on the statute books to prevent coercion, but there are no laws to prevent some kinds of coercion against a union member by a union official. There are laws, but they are not effective. If you are going to use that law to protect the rights of unions or labor, you have just as much right to protect the employer.

Closed Shop Provisions

MR. BUCHANAN: How does the closed shop, which provides that a man who is not a union member cannot work, fit into this picture? How do you view that situation, Mr. Goldberg?

MR. GOLDBERG: A closed shop provision is merely a provision which provides that a man who enjoys the benefits of union organization shall, in the traditional American way, pay for that protection. An open shop is one in which a man who enjoys the benefits of union organization gets those benefits without paying for that protection. I don't think that any American can defend a free ride.

MR. HAAKE: If you use that kind of reasoning, then all of us should be forced to contribute to the churches of America, because we will admit that the churches foster better moral conditions and we all benefit by those better moral conditions. Therefore, every American citizen should be forced to contribute something to the payment of church expenses.

MR. GOLDBERG: No, I don't agree with you at all! I would defend the American system of freedom of religion from any source. But there is a vital distinction. We all pay for the privilege of government. We all pay for the privilege of the government's beneficent effects upon ourselves.

Now, when a union by a democratic election is recognized to be the bargaining representative for all the employees in a plant, I say it is unfair and I say it is contrary to our American tradition for a man to get the benefit of union conditions and not pay his way in that respect.

Majority Rule?

MR. HAAKE: I don't think you are right about that, because the very essence of the American system is that even a majority cannot force a member of the minority to do as it sees fit. There are certain rights and privileges that are inherent.

If a man doesn't want to join a union, he should not be forced to join a union. He has a right to work whether or not he belongs to a union. There is a practical aspect to it, yes, but the traditional American way is that the minority's rights are recognized even against a majority; and the majority cannot force a minority to do anything that is contrary to its constitutional rights.

MR. GOLDBERG: It is perfectly obvious, Mr. Haake, that your position is without foundation. Once a majority votes a tax, that tax is binding upon us all, and we must all pay that tax. Once the majority establishes, for example, a free system of public education, we must all pay to support it, although

we may choose to send our children to a private school. That is the essence of democratic majority rule.

MR. HAAKE: Yes, and if the government set up the union, if the government provided that the dues be paid to the government, you would have a parallel—but you don't have any parallel there. You are taking a private organization and trying to apply to it the limitations and requirements of a government.

If we follow your reasoning, then every manufacturer ought to belong to the National Association of Manufacturers, whether he wants to or not, or ought to belong to the Chamber of Commerce, whether he wants to or not. And believe me, no one would stand by the employer and the manufacturer more quickly than a union man to say that the National Association of Manufacturers has no right to force any manufacturer to pay dues into that association.

'Totalitarian Methods'

MR. GOLDBERG: Well, Mr. Haake, I find one statement that you made to be particularly objectionable. I would not think any American would want the government to set up any union.

MR. HAAKE: I am not saying it should. I am saying your parallel is good only if it does.

MR. GOLDBERG: But you suggest by your remarks that my analogy would apply if the government set up unions. That is an earmark of totalitarianism that all of us would want to condemn.

MR. HAAKE: Precisely so, and the next thing to totalitarianism under government is totalitarianism under irresponsible labor leaders.

MR. GOLDBERG: This phrase, "irresponsible labor leaders," is one that is made very glibly and is not sustained by the record. I have followed very closely the hearings in the present Congress under the proceedings to repeal the Taft-Hartley Act, and I have found no evidence that the labor leaders of this country who represent workers in collective bargaining are irresponsible. "Irresponsible labor leaders" is a propaganda term that has been used in an attempt to discredit men and women who are good American citizens.

MR. HAAKE: I think you would have to make some exception to that. Go to the Allis-Chalmers outfit up in Milwaukee. There were plenty of irresponsible labor leaders there.

You don't want cartels, do you? You wouldn't want the government to have the power, for example, to enforce agreements among manufacturers. If the majority of them sets prices or working conditions or production or something else you wouldn't want the government to force the other manufacturer to go along. You would say that was un-American. I would say the labor situation is just as un-American.

Good Leaders and Bad

MR. GOLDBERG: I agree with you that labor people and union leaders are not angels. They have erring brethren among them, but I proudly say that I would match the record of labor leaders in this country against the record of businessmen and industrialists who, you know, violate laws, too—some of the biggest of them.

MR. HAAKE: We wouldn't quarrel on that. I would say that probably 80, 85, or 90 per cent of the men on both sides are good men. I am not talking about that. I am saying that it is bad to put almost unlimited power in the hands of any man, even a good man. When you have a labor situation which places tremendous power in the hands of a few men, you have something that is not good for the country. I am not talking about the quality of the men but about their tremendous power.

MR. GOLDBERG: Of course, Mr. Haake, the thing you overlook is that there is no law which places unlimited power in the hands of any labor people. There are many laws on the books which curb abuses of power. Most of the time of responsible labor leaders is spent in seeing that our industrial machin-

ery works in the interests of the public at large. I think that should be recognized rather than condemned.

Look at the situation during the war. Under the Wagner Act we had the greatest record of productivity of any country in the world, and that record of productivity under that statute brought on victory against our common enemy. That should have been rewarded, not by any Taft-Hartley Act, but by the universal American commendation of American labor and American labor leaders who, under a free system and under a system of voluntary allegiance to our American way, produced the victory.

War Record

MR. HAAKE: That is unfair! I am not saying that labor is bad, but why pin a halo on labor when a halo doesn't belong there? This great productivity in the war was not due to the great extra efforts of individuals. There were more people at work than ever before, and we had better ways for them to work.

Do you mean to tell me that in Muskegon, Michigan, for example, when a man who had a son in the Army tried to work more hours and do more work and caused a strike because a union said he was killing the job, that such a union helped us in the war?

Do you mean to tell me that when the union made inexperienced men pay big dues to join the union and then saw to it that they didn't do much work that the unions were a help?

Then there was a case of a plant where the men quit on Saturday at noon and would have to come back on Monday morning to complete the work. If they had stayed over an hour on Saturday to complete the work and ship the material, the boys could have had it 48 hours earlier. That doesn't call for any halo.

MR. GOLDBERG: I am merely stating what the record of performance shows —that the United States under the system we employed during the war produced the greatest amount of goods, machinery, equipment, airplanes, tanks, and other instruments of warfare. That was done under our free system. And I think that deserves commendation for those men and women who participated.

MR. HAAKE: Quite so.

MR. BUCHANAN: You speak of a *free system.* I frequently hear the argument that the employer is not allowed to speak against the union, while the union can use propaganda and public speeches. Do you think that is a logical argument, Mr. Haake?

Is Employer Muzzled?

MR. HAAKE: That was true under the Wagner Act. If the employer just told the plain truth—dared to say what he believed to be true—he found himself haled into court for unfair labor practice. On the other hand, the union was absolutely unbridled. It could publish things that were malicious, absolutely untrue, in some cases filthy, and get away with it.

MR. GOLDBERG: That is not correct!

MR. HAAKE: I will show you the record of the unions in Detroit, Michigan—the actual papers!

MR. GOLDBERG: I must disagree with Mr. Haake. The Supreme Court decided—as it had to decide in accord with our Constitution—that under the Wagner Act, the Constitution completely protected employers and employees in the exercise of their rights of free speech.

MR. BUCHANAN: In this discussion I see many problems, probably inherent in any labor law. For instance, we have dealt with the problems of the closed shop, government seizure of plants, court injunctions, national emergency strikes, an anti-trust law covering unions, free speech for employers, and others.

There may be no one answer to any of these problems, but, as long as we can discuss them freely and honestly, we are at least on the road toward a fair and wise labor law.

Suggested Readings

Compiled by Laura R. Joost, Assistant, Reference Department, Deering Library, Northwestern University

GREGORY, CHARLES O. *Labor and the Law.* New York, Norton, 1946.

Summary of what has happened in the legal field where labor is concerned. Good background for studying formulation of labor legislation.

HARTLEY, FRED ALLEN, Jr. *Our New National Labor Policy: The Taft-Hartley Act and the Next Steps.* New York, Funk, 1948. (Modern Industry Book)

History and defense of the Taft-Hartley Labor Act by its co-author.

U.S. Congress. 81st Congress, 1st Session, House of Representatives. HR2032. (Some copies available through Congressmen).

The Administration's labor bill introduced in the House by Mr. Lesinski on January 31, 1949.

U.S. Congress. 81st Congress, 1st Session, House of Representatives. HR4290. (Some copies available through Congressmen).

Labor-management relations bill introduced in the House by Mr. Wood on April 14, 1949.

U.S. Congress. 81st Congress, Senate. S249. (Some copies available through Congressmen).

Labor bill to repeal certain sections of the Taft-Hartley Act; introduced in the Senate by Mr. Thomas on January 6, 1949.

U.S. Congress. 80th Congress, 1st Session, House of Representatives. HR3020. P.L. 101, 80th Congress, 1st Session; 61 Stat. 136.

The Taft-Hartley Labor Act, introduced into the House on April 10, 1947 by Mr. Hartley; passed over Presidential veto on June 23, 1947, becoming Public Law 101.

U.S. Congress. 74th Congress, 1st Session, Senate. S1958. P.L. 198, 74th Congress, 1st Session; 49 Stat. 449.

The Wagner Labor Act, introduced in the Senate on February 21, 1935 by Mr. Wagner; approved on July 5, 1935, becoming Public Law 198.

Commonweal 49:378-80, Jan. 21, '49. "Replacing the Taft-Hartley Act." J. C. CORT.

Suggestions for revising the Taft-Hartley Labor Act.

Congressional Digest 28:104-6, April, '49. "Labor Story in Congress, Past, Present and Future."

A very brief summary of labor-management relations and the law, and a note of prediction about the kind of labor law the 81st Congress is likely to adopt.

Congressional Digest 28:101-28, April, '49. "Taft-Hartley Act: Should it be Repealed? Revised? Bolstered?"

Background material on labor legislation, and a pro and con discussion of the Taft-Hartley Act.

Nation 167:656, Dec. 11, '48. "Replacing Taft-Hartley."

A note suggesting that any new labor legislation should not cripple the trade-union movement but, at the same time, should not exempt labor from its responsibilities to democratic society.

New York Times Magazine p. 7-9+. "For a New Labor Law; A Basic Analysis." W. M. LEISERSON.

A detailed examination of the factors to be considered in new labor legislation.

Saturday Evening Post 221:15+, Oct. 30, '48. "Should We Repeal the Taft-Hartley Law?" J. M. SWIGERT.

A lengthy discussion defending the Taft-Hartley Labor Act.

Survey 85:88-94, Feb. '49. "Whatever the New Law . . ." BEULAH AMIDON.

"Crucial points in practice and policy which all parties and all citizens must consider if the new Wagner-Hartley-Taft-Truman-Lesinsky-Thomas bill is to work."

U.S. News 26:26-33, Feb. 11, '49. "Taft-Hartley Repeal; Restoring the Wagner Act; Interview With G. P. Van Arkel and G. D. Reilly."

Views of Mr. Van Arkel, who favors repeal of the Taft-Hartley Act, and Mr. Reilly, who would retain most of the law's provisions.

U.S. News 25:36-41, Nov. 26, '48. "What Does Labor Want from Industry and Government?" Interview with P. Murray.

Mr. Murray discusses the Taft-Hartley Act and requests restoration of the Wagner Act.

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